



**GRANT SUBRECIPIENT CONTRACT**

**THIS GRANT SUBRECIPIENT CONTRACT** (“Contract”) is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the “Effective Date”), by and between **THE CITY OF EMERYVILLE**, a municipal corporation, (“City”) and **ALAMEDA-CONTRA COSTA TRANSIT DISTRICT** (“Subrecipient”). The City and Subrecipient may be collectively referred to as “Parties” or individually referred to as “Party” in this Contract.

**WITNESSETH THAT**

**WHEREAS**, the Metropolitan Transportation Commission (“MTC”) operates a grant program to assist cities, counties and transit agencies deploy advanced technologies to enhance mobility, sustainability and safety along major arterials called the Innovative Deployments to Enhance Arterials (“Program”); and

**WHEREAS**, Subrecipient and Emeryville Transportation Management Association (“ETMA”) operate buses along major arterials within the City; and

**WHEREAS**, City desires to expand upon its existing Transit Signal Priority (TSP) system by deploying new and upgraded TSP infrastructure at signalized intersections along corridors utilized by buses within the City (“TSP Expansion”); and

**WHEREAS**, the TSP Expansion requires the purchase and installation of Global Traffic Technologies (“GTT”) GPS vehicle equipment on buses operating within the City; and

**WHEREAS**, on July 1, 2018, the City and MTC entered into the Master Funding Agreement between MTC and City for Planning, Programming, Transportation, Transit, Land Use and Other Projects (“Master Agreement”); and

**WHEREAS**, on August 1, 2018, pursuant to the terms of the Master Agreement, MTC and the City entered into Supplement 1 to Master Agreement, and its subsequent amendment dated October 3, 2018 (“Supplement”) to fund TSP expansion; and

**WHEREAS**, the City and the Subrecipient have an interest in furthering the purpose of the Program and TSP Expansion; and

**WHEREAS**, the City and the Subrecipient have justified sole sourcing equipment from GTT due to the compatibility with existing on-street infrastructure, and the unique capability of independently requesting TSP to a bus based on real-time schedule & headway adherence instead of a time interval, which is much more efficient; and

**WHEREAS**, the City and the Subrecipient recognize that the purchase and installation of TSP equipment purchased from GTT on buses operating within the City (“Project”),

FOR CITY USE ONLY			
Contract No.		CIP No.	
Resolution No.		Project No.	

as more fully described in **EXHIBIT A**, is eligible for funding from the Program pursuant to the terms of the Master Agreement and Supplement; and

**NOW, THEREFORE**, in consideration of the mutual covenants herein set forth and the mutual benefits to be derived there from, the Parties agree as follows:

## **A G R E E M E N T**

### **1. INCORPORATION OF RECITALS**

The Recitals set forth above are true and correct and are incorporated into this Contract as though fully set forth herein.

### **2. SUBRECIPIENT FUNDING AND SUPPORT**

The City has programmed **Seven Hundred, Forty Five Thousand, Eight Hundred Eighty-Eight Dollars (\$745,888)** for the Project ("Project Funds"). The Project Funds will be disbursed to Subrecipient, as checked below:

- In a lump sum upon execution of this Contract by the Parties. Project Funds disbursed shall be expended during the Fiscal Year solely on the Project and Services as described in **Exhibit A**. Subrecipient shall return to the City any Project Funds not expended during the Fiscal Year within thirty (30) calendar days of either completion of the Project or the end of the Fiscal Year, whichever occurs first.
- As set forth in **Exhibit A**.

### **3. SERVICES**

The Subrecipient's scope of services and the time periods of performance for such services are set forth in **EXHIBIT A** ("Services" and "Performance Criteria") attached hereto and by this reference made a part hereof. The Subrecipient shall not undertake any work under the terms of this Contract that is outside of the Services as outlined in **EXHIBIT A**.

### **4. STANDARD OF CARE**

Subrecipient shall perform all Services under this Contract in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California, and consistent with all applicable laws. Subrecipient represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including any required business license, and that such licenses and approvals shall be maintained throughout performance of the Services.

## 5. TIME OF PERFORMANCE

The time for performance is as checked below:

- The Services by Subrecipient are to commence on the “Effective Date” and shall continue in full force and effect through and including **JUNE 30, 2021**, or until completed, whichever occurs first.
- As set forth in **Exhibit A**.

## 6. RECORD RETENTION AND AUDITS

The Subrecipient shall maintain such property, personnel, financial and other records and accounts to assure proper accounting for all Project Funds authorized under this Contract. Records, maps, field notes and supporting documents and all other records pertaining to the use of Project Funds disbursed to the Subrecipient hereunder shall be retained by the Subrecipient and available to the City and/or MTC for examination and for purposes of performing an audit for a period of five (5) years from the date of expiration or termination of this Contract. The Subrecipient shall permit on-site inspection by City representatives or other federal or state officials with oversight over the Project or Services with fifteen (15) business days prior written notice, and ensure that its officials, employees, consultants and agents furnish such information and cooperation, as in the judgment of the City, may be relevant to a question of compliance with contractual conditions and directives, or the effectiveness, legality, and achievements of the Project and/or Services, or for audits. All the Project and/or Services specific Subrecipient records shall be made available to representatives of the City and/or MTC for review upon request. In the event of litigation or an audit relating to this Contract or funds paid to the Subrecipient by the City under this Contract, such records shall be retained by the Subrecipient until all such litigation or audit has been resolved. This section shall survive termination of this Contract.

## 7. ACCOUNTING

- A. All expenditures shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges.
- B. The Subrecipient shall establish and maintain on a current basis an adequate accrual accounting system in accordance with generally accepted accounting principles, practices, and standards.
- C. At all times, the Subrecipient shall maintain the financial books and records of the Subrecipient to be established pursuant to this Contract and maintained by the Subrecipient separate and apart from other Subrecipient financial records.
- D. Reporting Requirements

The Subrecipient shall submit reports as requested by the City in order to fulfill its requirements in accordance with the Master Agreement and Supplement. In addition, the Subrecipient shall submit the following reports in order for the City to have adequate information to fulfill the reporting requirements of the grant, as checked below:

- Within ninety (90) calendar days of the end of the Project or the end of the fiscal year, whichever is earlier, the Subrecipient will submit a report, which must contain the following:
  - A description of the actual Project revenue received, including but not limited to, City grant funds, other agency grant funds, private and corporate donations, as well as any sales.
  - The actual grant-funded Project expenditures.
  - A description of the completed Project.
  - Copies of any promotional materials, newspaper articles or other publicity.
  - The signature of the Community Services Director prior to submittal to the City's Contract Coordinator.
  - Other: Description
- On a monthly / quarterly basis, the Subrecipient will submit a report, which must contain the following:
  - A description of the actual Project revenue received, including but not limited to, City grant funds, other agency grant funds, private and corporate donations, as well as any sales.
  - The actual Project expenditures by line-item.
  - A description of the completed Project, including attendance numbers.
  - Copies of any promotional materials, newspaper articles or other publicity.
  - Other: Description
- As set forth in **Exhibit A**.

## 8. SUBRECIPIENT SERVICES

The Subrecipient shall undertake the duties defined for their respective agency under "Services" in Exhibit A. The Subrecipient agrees to be solely responsible for its own

matters relating to the time and place the Services are performed; the instrumentalities, tools, supplies and/or materials necessary to complete the Services; hiring of consultants, agents or employees to complete the Services; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Subrecipient agrees to be solely responsible for its own acts and those of its subordinates and employees during the term of this Contract.

## 9. CALIFORNIA LABOR CODE REQUIREMENTS

It shall be mandatory upon the Subrecipient and all subcontractors to comply with all applicable [California Labor Code](#) provisions, which may include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Sections 1777.1). Subrecipient shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with applicable California Labor Code provisions.

## 10. CITY LABOR REQUIREMENTS

As of the Effective Date, compliance with the City's living wage ordinance is  required /  not required for this Contract. If this Contract provides for compensation to Subrecipient of \$25,000 or more within a single fiscal year for providing Services to the City, then Subrecipient shall comply with the requirements of the City's Living Wage Ordinance set forth in [Chapter 31 of Title 5 of the Emeryville Municipal Code](#), unless (i) Subrecipient is a governmental entity, (ii) this Contract is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Contract is subject to federal or state laws or regulations that would preclude the application of the City's laws. Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Contract for all employees of Subrecipient who perform at least twenty-five percent (25%) of the work arising from this Contract, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to [Section 5-31.08 of the Emeryville Municipal Code](#). Subrecipient shall promptly provide to the City documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from the City. Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Subrecipient for back pay, reinstatement and compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the City may terminate the Contract and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance. Subrecipient shall notify each of its affected employees with regards to wages that are required to be paid pursuant to this Contract. "Living Wage" means no less than **\$16.20 PER HOUR** (which is [subject to increase annually on July 1st](#) to reflect the twelve-month average

increase to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Area for the preceding year from May to April, not to exceed three percent (3%) in any one year) including wages and health benefits. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.

In addition to the Living Wage Ordinance, the Subrecipient may be required to comply with the [City's Minimum Wage, Paid Sick Leave, and Other Employment Standards Ordinance](#), as set forth in [Chapter 37 of Title 5 of the Emeryville Municipal Code](#), to the extent it is applicable.

## 11. INSURANCE

Subrecipient shall not commence performance of Services or the Project under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under **EXHIBIT B**, with the exclusion of clause number 5 "Errors and Omissions Professional Liability Insurance" attached hereto and incorporated herein by this reference. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

For purposes of this Contract only, the term "AGENCY" as used in **EXHIBIT B** shall refer to Alameda-Contra Costa Transit District, and the term "MTC" shall refer to Metropolitan Transportation Commission and the City of Emeryville. With respect to submission of Certificates of Insurance as set forth in paragraph 1.G (pp. 8-9) of **EXHIBIT B**, Subrecipient shall also submit the required documentation to the City at the email addresses provided for in Section 17 of this Contract.

## 12. INDEMNIFICATION

To the fullest extent permitted by law, Subrecipient shall indemnify, defend, and hold harmless City and City's members, officers, agents, employees and volunteers, and MTC, its Commissioners, representatives, agents and employees from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including without limitation injury to or death of an employee of Subrecipient or subcontractors as well as any claim by any employee, agent, Subrecipient or independent contractor hired or employed by Subrecipient that such persons or individuals are entitled to any benefit otherwise provided to employees of the City, including coverage under the California Public Employee Retirement System), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses, and fees of expert contractors or expert witnesses incurred in connection therewith and the costs of investigation, arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Subrecipient, any subcontractor, anyone directly or indirectly employed by them or anyone that they control. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation

payable to or for Subrecipient. This obligation to indemnify and defend the City, its members, officers, agents, employees and volunteers and MTC, its Commissioners, representatives, agents and employees shall survive termination of this Contract.

### 13. WAIVER AND RELEASE

Subrecipient hereby waives, releases, and discharges and agrees not to sue the City, their representatives, officials, officers, employees, attorneys, agents, and volunteers for any injury, death, or damage to or loss of personal property arising out of, pertaining to, or relating to, directly or indirectly, the Project, or the Services. Further, after consultation with its independent counsel, Subrecipient expressly waives any and all rights provided by California Civil Code Section 1542, which states that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR DOES NOT KNOW OR SUSPECT OR EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, THAT IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS RELEASE WITH THE DEBTOR OR RELEASED PARTY.

By initialing, Subrecipient acknowledges, represents and warrants that it has carefully read this waiver, release, and agreement not to sue and fully understands its contents and understands the significance and consequences of this waiver, and hereby assumes full responsibility of any damages or losses caused by this waiver. Subrecipient further acknowledges that it may hereafter discover facts in addition to, or different from, those that is known or believed by it to be true with respect to the claims hereby released. Subrecipient hereby agrees that it nonetheless intends to, and hereby does fully, finally, and forever, settle and release any and all such claims without regard to the subsequent discovery or existence of such different or additional facts. Subrecipient is aware that by initialing in the space below and signing this Contract, Subrecipient is giving up legal rights and is signing in its own free will. Subrecipient understands this is a release of all liability, and is material to the City entering into this Contract.

Subrecipient's Initials \_\_\_\_\_

### 14. DISCRIMINATION

- A. No person shall, on the grounds of race, sex, creed, color, religion or national origin, be excluded from participating in, be refused the benefits of, or otherwise be subjected to discrimination in any activities, programs, or employment supported by this Contract.

- B. Subrecipient covenants and agrees that in performing the Services required under this Contract, the Subrecipient shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin or ancestry, age or disability, except as provided in section 12940 of the Government Code. As provided for in the indemnity obligations of this Contract, Subrecipient shall indemnify City against any alleged violations of this paragraph, including, but not limited to, any fines or penalties imposed by any governmental agency.

## 15. CHANGES IN GRANT ALLOCATION

- A. The City may grant additional funds at its discretion for use by the Subrecipient to assure the successful completion of the Project or Services.
- ⇒ Notwithstanding anything to the contrary in this Contract, the City's obligation hereunder to provide Project Funds to Subrecipient for the purpose of reimbursing Subrecipient for its qualified costs and expenses shall be fully contingent upon the availability of funding under the Master Agreement and Supplement and the allowability of Subrecipient's invoiced costs and expenses. In the event City finds any of Subrecipient's costs or expenses to be non-allowable, Subrecipient shall be solely liable for such costs or expenses and must return any Project Funds expended on such non-allowable costs or expenses to City within thirty (30) days of notification by the City. Allowable expenses will be the expenses defined in Exhibit B, Supplement No. 1 – IDEA Category 2 Deployment Agreement between MTC and City of Emeryville.

**16. NOTICES**

All notices herein required shall be in writing. Notices shall be sent by prepaid First-Class Mail to the following Address:

<b>CITY</b>	<b>SUBRECIPIENT</b>
<p>Christine Daniel, City Manager 1333 Park Avenue Emeryville, California 94608 Phone No.: 510-596-4341 E-Mail : cdaniel@emeryville.org</p> <p><i>with a copy to:</i> Ryan O'Connell 1333 Park Avenue Emeryville, California 94608 Phone No.: 510-596-4346 E-Mail : roconnell@emeryville.org</p>	<p>Evelyn Ng, Capital Planning and Grants Manager 1600 Franklin Street Oakland, CA 94612 Phone No.: 510-891-5405 E-Mail : eng@actransit.org</p>

**17. ASSIGNMENT**

This Contract is not assignable by the Subrecipient without the express prior written consent of the City, which consent shall be given in the City's sole discretion. Any attempt by the Subrecipient to assign any performance of the terms of this Contract, outside of the Services defined in Exhibit A, shall be null and void and shall constitute a material breach of this Contract upon the occurrence of which the City may, among its other remedies, and without limitation or prior notice, cancel, terminate or suspend this Contract.

**18. TERMINATION**

The City may terminate this Contract at any time with or without cause. If the City terminates this Contract without cause, Subrecipient shall be entitled to be paid in full for those Services adequately completed prior to the notification of termination. If City terminates this Contract for cause, Subrecipient shall promptly return any Project Funds not expended to the City, and City shall be entitled to conduct an audit as provided for in Section 6 and to recover any Project Funds that were expended in violation of this agreement. Up to the time of disbursement of funds for the Project, Subrecipient may terminate this Contract for convenience, or upon 30 calendar days' written notice to the City in the event of City's failure to perform in accordance with the terms of this Contract through no fault of Subrecipient. Notwithstanding anything to the contrary, the City may terminate this Contract immediately upon notice that MTC or the City Council did not appropriate sufficient funds for this Contract.

## **19. CONFLICT OF INTEREST**

The Subrecipient, its agents and employees shall comply with all applicable federal, state, county, and city laws and regulations governing conflict of interest. To this end, the Subrecipient will make available or shall provide copies of all applicable federal, state, county, and city laws and regulations governing conflict of interest, to its agents and employees.

## **20. RELIGIOUS PROSELYTIZING OR POLITICAL ACTIVITIES**

The Subrecipient agrees that it will not perform or permit any religious proselytizing or political activities in connection with the performance of this Contract. Project Funds under this Contract will be used exclusively for performance of the Scope of Services required under this Contract and no funds shall be used to promote any religious or political activities.

## **21. SEVERABILITY**

Each and every section of this Contract shall be construed as a separate and independent covenant and agreement. If any term or provision of this Contract or the application thereof to certain circumstances shall be declared invalid or unenforceable, the remainder of this Contract, or the application of such term or provision to circumstances other than those to which it is declared invalid or unenforceable, shall not be affected thereby, and each term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

## **22. AMENDMENT OR MODIFICATION**

This Contract may only be modified or amended by written instrument duly approved and executed by each of the Parties hereto. Any such modification or amendment shall be valid, binding and legally enforceable only if in written form and executed by each of the Parties hereto, following all necessary approvals and authorizations for such execution.

## **23. GOVERNING LAW AND ATTORNEY'S FEES**

This Contract shall be governed by the laws of the State of California. Any legal action arising from or related to this Contract shall be brought in the Superior Court of the State of California in and for the County of Alameda. In the event that any suit or action is instituted to enforce any provision in this Contract, the prevailing party in such dispute shall be entitled to recover from the losing party all reasonable attorney's fees, costs and expenses arising out of enforcing any right of such prevailing party under or with respect to this Contract.

## **24. COMPLIANCE WITH LAW AND OTHER REQUIREMENTS**

The Subrecipient shall comply with all applicable local, state and federal laws, including, but not limited to, environmental acts, rules and regulations applicable to the work to be

performed by the Subrecipient under this Contract. The Subrecipient shall maintain or cause all necessary licenses and registrations for the lawful performance of the work required of the Subrecipient under this Contract. In addition to the above, the Subrecipient is required to comply with the additional requirements as checked below:

- The Subrecipient is informed and aware of the funding requirements applicable to this Contract and the Subrecipient flow down requirements contained therein and on that basis certifies that it shall comply with said Subrecipient flow down requirements in the performance of this Contract ("Funding Requirements"). Such Funding Requirements are attached hereto as **EXHIBIT C** and incorporated herein by this reference. The subrecipient will not be subject to comply with Debarment clause, State requirements for Nondiscrimination of Assurances clause and Caltrans Nondiscrimination clause. As used in **EXHIBIT C**, the term AGENCY shall refer to Alameda-Contra Costa Transit District.
- Any individuals providing direct service to the City's Youth Recreation Program and/or through the Emery Unified School District as part of this Contract must be fingerprinted by the Emeryville Police Department, and receive approval from the City Manager or designee before initiating the Project of Scope of Services.
- The Façade Improvement Grant Program requirements set forth in **EXHIBIT A**, attached hereto, and incorporated by reference.
- Other Requirements as set forth in **EXHIBIT C** attached hereto and incorporated by reference.

## 25. NON-WAIVER

Failure of either Party to enforce any provision of this Contract shall not constitute a waiver of the right to compel enforcement of the same provision or any remaining provisions of this Contract.

## 26. REPRESENTATIVES OF PERSONS EXECUTING THE CONTRACT

The persons executing this Contract warrant that they are duly authorized to execute this Contract on behalf of and bind the respective Party that each purports to represent.

## 27. PRESS RELEASES

Neither Party will use the name of the other Party or its employees in any advertisement or press release without the prior written consent of the other Party.

## 28. CONSEQUENTIAL DAMAGES AND LIMITATION OF LIABILITY

The Subrecipient agrees that in no event will the City become liable to the Subrecipient under this Contract for any damages including but not limited to, special damages, loss

of revenue, loss of profit, operating costs or business interruption losses, regardless of cause, including breach of contract, negligence, strict liability or otherwise. The limitations and exclusions of liability set forth in this Section shall apply regardless of fault, breach of contract, tort, strict liability or otherwise of the City, its employees or sub-consultants.

## **29. ENTIRE AGREEMENT**

This Contract constitutes the entire agreement between Parties. This Contract supersedes all prior negotiation, discussions and agreements between Parties concerning the subject matters covered herein. The Parties intend this Contract to be the final expression of their agreement with respect to the subjects covered herein and a complete and exclusive statement of such terms.

## **30. COUNTERPARTS**

This Contract may be signed in counterparts, each of which shall constitute an original. It is expressly agreed that each Party to this Contract shall be bound by its own telecopied, scanned, electronic or digital signature and shall accept the telecopied, scanned, electronic or digital signature of the other Party to this Contract.

*SIGNATURES ON FOLLOWING PAGE*

**31. SIGNATURE PAGE TO GRANT RECIPIENT CONTRACT**

**IN WITNESS WHEREOF** the City and the Subrecipient have executed this Contract, which shall become effective as of the date first written above.

Approved As To Form:

\_\_\_\_\_  
City Attorney  
(Emeryville)

Approved As To Form  
and Content:

\_\_\_\_\_  
General Counsel (AC  
Transit)

Dated:

\_\_\_\_\_, 2020

**CITY OF EMERYVILLE**

\_\_\_\_\_  
Christine S. Daniel, City Manager

Dated:

\_\_\_\_\_, 2020

**ALAMEDA-CONTRA COSTA TRANSIT DISTRICT**

\_\_\_\_\_  
Michael Hursh, General Manager *(Signature)*